

**PENAL BOARD--CRIMINAL COURTS--JUDGMENT:** Penal Board has no authority to accept prisoners committed to Industrial Home for Negro Girls at Tipton, Missouri, contrary to law.

November 6, 1935. 11-7



Honorable George D. Bryant  
Chairman Pardon and Parole Board  
Department of Penal Institutions  
Jefferson City, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"On the first day of August, 1935, at the July 1935 term of the Dunklin County Circuit Court, the above named negress, who was but fourteen years of age, entered a plea of guilty to a charge of second degree murder. The Court sentenced this girl to a term of twelve years imprisonment, commuting the sentence to confinement in the Industrial Home for Negro Girls at Tipton, Missouri.

"The sentence provides that she shall remain in the Industrial Home for Girls until she arrives at the age of twenty one years and she shall then be transferred to the State Penitentiary to serve the remainder of her sentence.

"She has been delivered to and received at the Industrial Home for Negro Girls.

"Question: Has the Penal Board authority under our Statutes to accept this negro girl at the Industrial Home for Negro Girls under her plea of guilty to a charge of second degree murder?"

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The facts in your case show that a fourteen year old negress was informed against under the general criminal law in the Circuit Court of Dunklin County for the crime of murder in the second degree, and upon her plea of guilty sentenced to a term of twelve years imprisonment, a part of the confinement to be in the Industrial Home for Negro Girls at Tipton, Missouri. We assume the procedure followed by the Court was in accordance with Ex parte Bass, 40 S. W. (2d) 457.

Section 8379 R. S. Mo. 1929, pertains to the State Industrial Home for Negro Girls and specifically designates who may be committed to the institution. We quote said section.

"All commitments to the industrial home for negro girls of negro girls over the age of ten and under the age of eighteen shall be made by the juvenile division of the circuit court. Every negro girl over the age of ten years and under the age of twenty-one years, who shall be convicted of any offense not punishable with imprisonment for life, or whose associations are immoral or criminal, or bad and vicious, or who is incorrigible to such an extent that she cannot be controlled by her parents or guardian or in whose custody she may be, may be sentenced to said industrial home until she shall reach the age of twenty-one years, if the court or magistrate before whom such conviction shall be had deems the girl so convicted a fit subject to be committed to said home, and the age of the girl so committed to be indorsed on the commitment."

One of the underscored provisions of the above section shows that only negro girls over the age of ten years and under the age of eighteen years shall be committed when the commitment is made by the juvenile division of the Circuit Court. In this case the negress was not committed by the juvenile division of the Circuit Court, but by the Circuit Court, consequently that pre-

vision is not authority for her commitment. The second provision then recites that "every negro girl over the age of ten years and under the age of twenty-one years who shall be convicted of any offense not punishable by imprisonment for life." It is to be noted that a negro girl between those ages could be committed to Tipton by order of the Circuit Court if the offense was not punishable by life imprisonment. In the instant case the negress was convicted of a crime punishable with life imprisonment. The penalty of second degree murder is found in section 3984 R.S. Mo. 1929, which provides a punishment of not less than ten years nor more than life imprisonment. Consequently when the Circuit Court accepted a plea of guilty on the part of the negress to a second degree murder charge, and said punishment could have been life imprisonment, the Court did not have authority under Section 8379, supra, to commit said negress to the Negro Industrial Home at Tipton, Missouri. It is to be further noted that said section only gives the Court jurisdiction to sentence a prisoner to the home until said prisoner reaches the age of twenty-one years. In this case the sentence is divided, part to run until she reaches the age of twenty-one in the Tipton Home, the balance of the term to be served in the Penitentiary.

16 Corpus Juris, page 1305, Section 3081 provides:

"While it is the better practice, in pronouncing sentence on one convicted of crime, to specify the place of imprisonment, a sentence is not void because it does not specify the particular prison in which accused shall be incarcerated, where the statute designates the prison. A sentence which provides that defendant shall be confined in some place other than that designated in the statute is void, \* \* \* \*"

#### CONCLUSION.

We are of the opinion that the Penal Board has no authority to accept this negro girl at the Indus-

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trial Home for Negro Girls under the facts stated in your letter. There is no statutory authority for the commitment which was issued, hence it is void on its face.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

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JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General.

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